

**STATE BOARD OF EQUALIZATION**

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March 30, 1995

Ms. K--- B---
M--- S---
XXXX --- --- ---
--- Building, Suite XXX
P.O. Box XXXXX
---, Texas XXXXX-XXXX

RE: [No Permit Number]
Herbal Tea

Dear Ms. B---:

I am responding to your letter to Assistant Chief Counsel Gary J. Jugum dated February 1, 1995, in which you ask for staff opinion on the sales of certain teas. You attached to your letter several copies of packets of the tea products in which you are interested. You assert that "it appears that all teas are exempt from the tax."

OPINION

A. Sales and Use Tax Generally.

In California, except where specifically exempted by statute, Revenue and Taxation Code Section 6051 imposes an excise tax, computed as a percentage of gross receipts, upon all retailers for the privilege of selling tangible personal property at retail in this state. (Unless otherwise stated, all statutory references are to the Revenue and Taxation Code.) "[I]t shall be presumed that all gross receipts are subject to tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale ..." (§ 6091.) "Exemptions from taxation must be found in the statute." (Market St. Ry. Co. v. Cal. St. Bd. of Equal. (1953) 137 Cal.App.2d 87, 96 [290 P.2d 201].) "The taxpayer has the burden of showing that he clearly comes within the exemption." (Standard Oil Co. v. St. Bd. of Equalization (1974) 39 Cal.App.3d 765, 769 [114 Cal.Rptr. 571].)

B. Food Products Exemption

Section 6359, as interpreted and implemented by Regulation 1602, provides an exemption from sales and use taxes for sales of food products for human consumption under certain circumstances. Subdivision (4) of Regulation 1602(a) specifically excludes medicines from the definition of “food products.” (Sales and Use Tax Regulations are Board promulgations which have the force and effect of law.) We have previously determined that herbal teas are considered to be “food products” unless their labels or packaging call them food supplements or make specific medicinal claims for the product. (Annot. 245.1350. Sales and Use Tax Annotations are excerpts from previous Board Staff opinion letters and serve as a guide to Staff positions.)

C. Tax Consequences.

First of all, we note that the teas are made by the Y--- T--- Company. The title of this line of teas as it appears on each packet is “Ancient Healing Formula.” On each of the packets (apparently) is printed the following language:

“Before modern times, healers combined herbs and spice and made ‘teas’ to keep families healthy. The tea kettle became the family medicine chest. Ayurveda, a complete system of herbal medicine thousands of years old, grew from this very basic and natural healing tradition....

“We have carefully created this special Ayurvedic Herbal Formula to give you the ancient healer’s touch.”

Therefore, each packet contains a claim that the tea has general medicinal properties.

1. Echinacea Fitness Tea. Although the packet makes no claims for this tea, we have already determined that it is sold as a treatment for ulcers and boils.

2. Ginger Tea. The packet claims that ginger tea “is invigorating and a universal tonic.” Stedman’s Medical Dictionary (24th ed., ill., 1990) defines “tonic” as a “remedy purported to restore enfeebled function and promote vigor and a sense of well being; qualified, according to the organ or system on which they are presumed to act, as cardiac, digestive, hematic, vascular, nervine, uterine, general, etc.” Ginger tea is thus a medical remedy.

3 Easy Lax Tea. The packet states that this product “is helpful for regular elimination.... Use this formula in moderation and not for an extended time.” This tea thus claims laxative properties.

4. De Tox Tea. The packet gives this instruction to the user: "Purify yourself every day." On the back, it says:

"With today's hectic pace, it is difficult to eat the right food, drink the right water, and at times even breathe the right air. Our environment can wear very harshly on us. Often, we can use a break to clean out, to 'de-tox.'

"In ancient traditions, this is done by carefully balancing the body's generative and eliminative forces. Drinking De-Tox tea can be an important part of this balancing process...."

We have previously determined that such teas are sold for the purpose of eliminating various toxins in the body.

5. Cold Season Tea. The packet gives the following instructions:

"Drink COLD SEASON TEA through the cold season. It does more than just treat your symptoms. Drink it 3 to 4 times per day for optimal health."

This tea thus says it is a cold remedy.

6. Calming Tea. The packet contains the following legend:

"We live in a high pressure society which seemingly too often requires aggressive 'Type-A' behavior to 'get ahead'. This type of behavior increases the fire element (called 'pitta docha') in the body and creates an imbalance in the body's energies due to the excess heat. Calming Tea helps one 'cool down' and take life a little more easily without losing the necessary dynamism to compete successfully in today's high pressure world...."

This tea thus claims tranquilizing properties.

7. Breathe Deep Tea. The packet contains the following legend:

"Due to factors such as environmental pollution, smoking and stress, our lungs are placed under a great burden in properly carrying out their many functions. The herbs in this formula have traditionally been used to help overcome these problems and strengthen the defensive energies of the body.

"Ancient Healing Formula's BREATHE DEEP TEA is good to use when there is discomfort in your breathing. It helps to tone and bring about a balance in the lung meridian."

This tea thus says that it maintains proper lung function.

8. Bedtime Tea. The packet contains the following legend:

“The herbs in Bedtime Tea are used in the science of Ayurveda to help one calm down and relax. Many people find that their mind ‘races’ seemingly out of control, or they are overly ‘driven’ in their behaviour. At evening or bedtime one needs to release the stresses and strains of the day through various relaxation or ‘wind down’ processes. Make Y--- T---’s Bedtime Tea part of your process to help ensure a sound, restful sleep with renewed vitality upon waking in the morning.”

This tea thus states that it has tranquilizing and sleep-inducing properties.

This line of teas claims generally that its products are sold for their medicinal properties. Each tea also states that it performs certain medical functions. We thus conclude that Y--- T---’s Ancient Healing Formula teas are “medicines” excluded from the definition of “food products” per Regulation 1591(a)(4). Their sales are thus subject to tax.

For your information, I have included a copy of Regulation 1591. I hope the above discussion has answered your questions. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Tax Counsel

JLW:sr